

Message Text

PAGE 01 USUN N 01037 01 OF 02 241804 Z

47

ACTION IO-13

INFO OCT-01 ADP-00 AF-10 ARA-11 EA-11 EUR-25 NEA-10 RSC-01

SSO-00 NSCE-00 USIE-00 CCO-00 INRE-00 L-03 COA-02

EB-11 OIC-04 CIAE-00 DODE-00 PM-09 H-02 INR-09

NSAE-00 NSC-10 PA-03 PRS-01 SS-14 ACDA-19 AEC-11

AGR-20 CG-00 COME-00 AECE-00 DOTE-00 FMC-04 INT-08

JUSE-00 NSF-04 OMB-01 TRSE-00 SCI-06 CEQ-02 RSR-01

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O R 241707 Z MAR 73

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 7149

INFO AMEMBASSY MADRID

AMEMBASSY JAKARTA

AMEMBASSY MANILA

AMEMBASSY KUALA LUMPUR

AMEMBASSY TEHRAN

AMEMBASSY ATHENS

AMEMBASSY RABAT

AMEMBASSY NICOSIA

AMEMBASSY DAR ES SALAMM

S E C R E T SECTION 1 OF 2 USUN 1037

DEPT PASS USINT SEC CAIRO

E. O. 11652: GDS

TAGS: PBOR, UN

SUBJ: LOS: STRAITS AND NAVIGATION PROPOSAL
BY STRAITS STATES

1. FOR SEVERAL DAYS REPORTS CIRCULATING THAT STRAITS
STATES AND OTHERS HAD PREPARED DRAFT ARTICLES DEALING
WITH STRAITS TRANSIT AND NAVIGATION. REPORTEDLY TO BE
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PAGE 02 USUN N 01037 01 OF 02 241804 Z

SPONSORED BY SPAIN, MALAYSIA, INDONESIA, PHILIPPINES,
EGYPT, IRAN, MOROCCO, AND GREECE, AND POSSIBLY

BY CYPRUS AND TANZANIA. MAY BE INTRODUCED AS EARLY AS
26 MARCH.

2. SALIENT POINTS OF DRAFT ARTICLES FOLLOW:

(A) ARTICLES 1-4, ARE BASED ON 1958 CONVENTION ON
TERRITORIAL SEA AND CONTIGUOUS ZONE WITH AMENDMENTS, AND
PROVIDE FOR INNOCENT PASSAGE THROUGH TERRITORIAL SEA IN
ACCORDANCE WITH ARTS. 14-1, 14-2, 14-3, 14-4, 17 AS
AMENDED, 14-5, 14-6 AS EXTENDED, 15-1 AS EXTENDED, 16-1,
16-2, 16-3, AND 16-4 AS AMENDED. ART. 4 PROVIDES THAT
THERE SHALL BE NO SUSPENSION OF INNOCENT PASSAGE OF FOR-
EIGN SHIPS THROUGH STRAITS USED FOR INTERNATIONAL NAVIGA-
TION WHICH FORM A PART OF THE TERRITORIAL SEA EXCEPT
THAT PASSAGE INCLUDING THAT OF WARSHIPS MAY BE REQUIRED
TO BE THROUGH LANES AS DESIGNATED BY THE COASTAL STATE.

(B) ARTICLES 6-10 DEALING WITH REGULATION OF PASSAGE
PROVIDE THAT COASTAL STATE MAY REGULATE
NAVIGATION IN TERRITORIAL SEA, INCLUDING REGULATIONS
RELATING TO SAFETY AND TRAFFIC, LANES AND TRAFFIC SEPARA-
TION SCHEMES, EXPLORATION AND EXPLOITATION, PASSAGE OF
SHIPS WITH SPECIAL CHARACTERISTICS, PREVENTION OF POLLU-
TION, AND MARINE RESEARCH. SHIPS IN INNOCENT PASSAGE
ARE SUBJECT TO REGULATIONS AGAINST INFORMATION COLLECTION,
PROPAGANDA, DISEMBARKING PERSONS WITHOUT PERMISSION,
SMUGGLING, DAMAGING CABLES OR PIPELINES, OR EXPLORING OR
EXPLOITING MARINE RESOURCES. COASTAL STATE MAY REQUIRE
SHIPS NOT IN COMPLIANCE WITH REGULATIONS TO LEAVE
TERRITORIAL SEA.

(C) ARTICLES 11-14 DEAL WITH MERCHANT SHIPS. NO
CHARGES MAY BE LEVIED FOR PASSAGE ALONE, BUT RIGHT OF
COMPENSATION EXISTS FOR WORKS UNDERTAKEN TO FACILITATE
PASSAGE. VARIOUS CRIMINAL AND CIVIL JURISDICTION PRO-
VISIONS ARE ENUMERATED.

(D) ARTICLES 14-18 DEAL WITH SHIPS WITH SPECIAL CHARAC-
TERISTICS, AUTHORIZING COASTAL STATE TO REGULATE PASSAGE
THROUGH TERRITORIAL SEA OF NUCLEAR POWERED SHIPS OR SHIPS
CARRYING NUCLEAR WEAPONS, SHIPS CARRYING NUCLEAR SUB-
STANCES OR ANY OTHER MATERIAL WHICH MAY ENDANGER COASTAL
STATE OR POLLUTE SERIOUSLY MARINE ENVIRONMENT, AND SHIPS
ENGAGED IN RESEARCH OF MARINE ENVIRONMENT. COASTAL STATE
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PAGE 03 USUN N 01037 01 OF 02 241804 Z

MAY REQUIRE NOTIFICATION OR AUTHORIZATION FOR PASSAGE
THROUGH TERRITORIAL SEA OF FOREIGN NUCLEAR POWERED SHIPS
OR SHIPS CARRYING NUCLEAR WEAPONS, SUBJECT TO ANY OTHER
AGREEMENT TO WHICH THE COASTAL STATE MAY BE A PARTY. PASSAGE
OF SHIPS CARRYING NUCLEAR SUBSTANCES OR ANY OTHER DANGER-
OUS POLLUTANTS MAY BE CONDITIONAL UPON PRIOR NOTIFICATION,
LIABILITY INSURANCE OR GUARANTEE CERTIFICATE, AND/OR USE
OF DESIGNATED LANES. PASSAGE AND CONDUCTING OF
RESEARCH BY SCIENTIFIC RESEARCH VESSELS REQUIRES AUTHORIZA-

TION.

(E) ARTICLES 19 AND 20 PROVIDE THAT THE PRECEDING ARTICLES APPLY TO GOVERNMENT OWNED SHIPS OPERATED FOR COMMERCIAL PURPOSES, AND THAT ARTICLES DEALING WITH NUCLEAR WEAPONS, NUCLEAR POWER, HAZARDOUS SUBSTANCES, AND SCIENTIFIC RESEARCH ARE APPLICABLE TO GOVERNMENT SHIPS FOR NON- COMMERCIAL PURPOSES. OTHER IMMUNITIES CONTINUE TO APPLY.

(F) ARTICLES 21-23 APPLY TO WARSHIPS, REQUIRING PRIOR NOTIFICATION OF PASSAGE OF WARSHIPS THROUGH TERRITORIAL SEA, COMPLIANCE WITH REGULATIONS OF COASTAL STATE, PROHIBITION OF SPECIFIED ACTIVITIES NOT DIRECTLY RELATED TO TRANSIT, PASSAGE THROUGH LANES SPECIFIED BY THE COASTAL STATE, AND RIGHT OF THE COASTAL STATE TO REQUIRE WARSHIP DISREGARDING REQUEST FOR COMPLIANCE TO LEAVE TERRITORIAL SEA.

NOTE BY OCT: USUN 1037 NOT PASSED CAIRO.

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PAGE 01 USUN N 01037 02 OF 02 241818 Z

43

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S E C R E T SECTION 2 OF 2 USUN 1037

3. ALTHOUGH INTRODUCTION OF ARTICLE DIFFICULT TO PREVENT, HIGHLY DESIRABLE TO KEEP TO MINIMUM NUMBER OF SPONSORS AND SUPPORTERS. US SEABEDS DELEGATION STRONGLY RECOMMENDS THAT UNLESS SERIOUS OBJECTIONS ARE PERCEIVED EMBASSIES MAKE HIGH LEVEL DEMARCHE TO REQUEST THAT HOST GOVERNMENTS INSTRUCT THEIR SEABEDS DELREP NOT TO SPONSOR THIS ARTICLE, AND NOT TO SUPPORT IF INTRODUCED. ASSUMING DEPARTMENT AGREES, FOLLOWING POINTS COULD BE DRAWN ON AS APPROPRIATE FOR COUNTRY CONCERNED:

(A) THESE ARTICLES LIMIT TRANSIT THROUGH STRAITS USED
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PAGE 02 USUN N 01037 02 OF 02 241818 Z

FOR INTERNATIONAL NAVIGATION TO INNOCENT PASSAGE, A SUBJECTIVE DOCTRINE ABUSE OF WHICH COULD PERMIT VITAL NAVIGATION RIGHTS TO BE INTERFERED WITH BY COASTAL STATE. US HAS PUT IN RECORD OBJECTIONS TO INNOCENT PASSAGE DOCTRINE DUE TO ITS SUSCEPTIBILITY OF ABUSE THROUGH COASTAL STATE SUBJECTIVE INTERPRETATION. THESE ARTICLES WOULD CODIFY SUCH UNACCEPTABLE RIGHT IN COASTAL STATE.

(B) US POSITION ON FREE TRANSIT OF VESSELS AND AIRCRAFT THROUGH AND OVER INTERNATIONAL STRAITS, INCLUDING SUBMERGED TRANSIT, REPRESENTS BASIC US OBJECTIVE IN LOS AND IS VITAL TO US INTERESTS. US HAS STATED IN SEABEDS COMMITTEE THAT IT WOULD BE UNABLE TO CONCEIVE OF A SUCCESSFUL LAW OF THE SEA CONFERENCE THAT DOES NOT ACCOMMODATE THIS BASIC OBJECTIVE. INTRODUCTION OF SUCH ARTICLES WOULD RENDER LOS NEGOTIATIONS AND SATISFACTORY OUTCOME SUBSTANTIALLY MORE DIFFCULT. UN GENERAL ASSEMBLY HAS SET DATE FOR COMMENCEMENT OF LOS CONFERENCE, WITH SUBSTANTIVE WORK TO BEGIN IN THE SPRING OF 1974 IN SANTIAGO; INITIATIVES SUCH AS THESE ARTICLES CAN PRODUCE ATMOSPHERE IN PREPARATORY NEGOTIATIONS NOW AND IN SUMMER 1973 CONDUCIVE TO DELAY AND DAMAGING TO INTERESTS OF ALL PARTICIPANTS.

(C) THOSE COUNTRIES WHICH HAVE CONCLUDED MUTUAL DEFENSE TREATIES WITH THE US HAVE AS A VITAL INTEREST CONTINUING MOBILITY OF US NAVAL AND AIR FORCES, AS THEIR SECURITY COULD BE SERIOUSLY AFFECTED BY ANY LIMITATION OF US FORCES TO MOVE RAPIDLY FROM ONE AREA TO ANOTHER.

4. EMBASSY MAY WISH TO REFER TO AUGUST 3, 1971 AND AUGUST 10, 1972 SPEECHES OF US REP TO UN SEABED COMMITTEE FOR MORE COMPLETE STATEMENT OF US POSITION. AS MADE CLEAR BY AUGUST 10 STATEMENT, EMBASSY SHOULD AVOID CONVEYING IMPRESSION THAT FREEDOM OF NAVIGATION IS THE ONLY IMPORTANT US OBJECTIVE IN LOS CONFERENCE.

5. FYI: MENTION OF FACT THAT US HOLDS TEXT OF ARTICLES
SHOULD BE AVOIDED, AND REFERENCE MADE TO SUBSTANCE ONLY.
END FYI.
PHILLIPS

NOTE BY OC/ T: NOT PASSED CAIRO.
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PAGE 03 USUN N 01037 02 OF 02 241818 Z

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